IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 555 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO. LTD - Appellant(s)
Versus
PURNIMABEN W/O PRABODH BALASHANKER BHATTJI - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) :
MR ATUL H MEHTA for Defendant(s) :

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 18/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the award made by the Motor Accidents Claim Tribunal (Aux.), Vadodara, dated 1st December, 2001 in Motor Accidents Claim Petition No. 1306/89, the present appeal has been filed by original respondent No. 2-insurance company, as it has been aggrieved by the quantum of compensation awarded to the original applicants-respondents Nos. 1, 2 and 3 herein.

2. The facts giving rise to Motor Accidents Claim Petition No. 1306/89, in a nutshell, are as under:

2.1 Late Shri Prabodh Balashanker Bhattji, an Advocate by profession, was travelling from Vadodara to Godhra in Fiat Car (No. GAM 8399) on 20.4.1989. It was the case of the claimants, heirs of Shri Bhattji, that driver Harshad Trivedi was driving the said car at an excessive speed and in a rash and negligent manner. When the car had reached GEB Unit near Asoj, driver Harshad Trivedi lost control over the vehicle and as a result thereof, the vehicle collided with a milestone and the car turned turtle, and after having rolled over 2-3 times, it fell into a ditch. As a result of the accident, driver Harshad Trivedi expired, whereas Advocate Shri Prabodh Bhattji and Shri Pratap Pandit, Civil Judge (SD), Godhra, who was also tavelling in the same car, suffered serious injuries. The said fiat car was followed by an ambassador car and Shri Nilesh Shah, who was in the ambassador car, saw the accident and, therefore, he stopped his car and with the help of some other persons, he helped the passengers of the

fiat car to come out of the car. An ambulance was summoned and the injured persons were rushed to a hospital and relatives of Shri Prabodh Bhattji were also informed.

2.2 Shri Prabodh Bhattji had suffered severe injuries and, therefore, he was hospitalised for a long period. He was recuperating at home and had started his normal activities. Subsequently, on 10th December, 1995 (i.e. after 6 years of the accident), Shri Prabodh Bhattji expired.

2.3 Shri Prabodh Bhattji had filed a motor accident claims petition praying for compensation to the tune of Rs. 9,999/-. After death of Shri Bhattji, the present applicants had raised the claim, by amending the claim petition, to the tune of Rs. 31,77,927/-.

2.4 It was submitted before the Tribunal that at the time of the accident late Shri Bhattji was earning approximately Rs. 10,000-15,000/- p.m. and had he not expired as a result of the accident, his income would have been increased to Rs. 30,000-40,000/- p.m. The age of the deceased was 48 years at the time of the accident and it was submitted that had he not expired on account of the accident, he would have lived up to 65 years and, therefore, it was prayed that multiplier of 11 should be applied while calculating compensation.

2.5 It was submitted before the Tribunal that the deceased had suffered severe injuries as a result of the accident. Due to the accident, brain of the

deceased had been damaged and he had received multiple fractures in his ribs and in both the legs. He had remained unconscious for a long period. So as to find out the nature of injuries, CT-scan was done. Because of the fractures and multiple operations performed on him, one leg of Shri Bhattji had been shortened. The deceased had remained in the hospital as an indoor patient for about 1½ months and during the said period several operations were performed on him. The deceased remained unconscious for about 3 months and a further period of 3 months was taken for gaining complete consciousness. Even after being discharged from the hospital, he had to very often visit doctors and thus substantial amount of money had been spent by him for his medical treatment. After the accident the deceased had become short-tempered and he was always under stress. He had started suffering from hypertension and he also started suffering from high blood pressure and there was stress on his heart also.

2.6 It was submitted before the Tribunal that the deceased expired on account of the accident. It was the case of the claimants that though the accident had taken place on 20th April, 1989 and the deceased died on 10th December, 1995, for 6 years the deceased suffered only on account of the accident and his death was also on account of the injuries which he had suffered due to the accident and, therefore, there was a nexus between the accident and the death.

2.7 Physicians who had treated the deceased had been examined by the Tribunal and the evidence adduced by

them was considered by the Tribunal. After considering the evidence and upon considering the submissions made on behalf of the claimants, the Tribunal ultimately awarded a sum of Rs. 20,32,780/- along with interest at the rate of 9% from the date of filing of the petition till realisation of the compensation. The amount had been awarded under the following heads:

Towards pain, shock and suffering	6,00,000
Towards actual loss of income	2,16,000
Towards future economic loss	8,79,780
Towards medicines, transportation, special diet, attendants, etc.	3,20,000
Towards consortium, funeral expenses, etc.	17,000
TOTAL	20,32,780

3. Learned advocate Shri R.H. Mehta appearing for the appellant insurance company has submitted that the amount awarded by the Tribunal is quite excessive. It has been submitted by him that there was nothing on record or no evidence was adduced to show that income of the deceased was more than Rs. 10,000/- p.m. Moreover, there was nothing on record to show that if the deceased had remained alive, he could have earned approximately Rs. 40,000/- p.m. It has been further submitted that death of the deceased was not on account of the accident or, in other words, the accident was not the causa causans for the death of the deceased and, therefore, the

compensation awarded by the Tribunal, believing that the deceased died only account of the accident, is on a higher side. In fact, the deceased was in hospital for a brief period and after being discharged from the hospital, he lived his normal life, but for the reasons not connected with the accident, the deceased expired and, therefore, the amount of compensation ought to have been less than what has been awarded by the Tribunal.

4. On the other hand, learned advocate Shri Atul Mehta appearing for the claimants has submitted that the amount of compensation awarded to the claimants is just, legal and proper. According to him, the deceased had a flourishing practice and in any event he could have earned much more than even Rs. 40,000/- p.m. had he not met with the accident. It has been submitted by him that in fact the Tribunal has not estimated his income properly and the Tribunal ought to have awarded more amount than the amount which has been in fact awarded by it.

5. We have heard the learned advocates and have perused the record and proceedings pertaining to the case.

6. Looking to the facts of the case, it cannot be doubted that driver Harshad Trivedi was driving the fiat car in a rash and negligent manner. There is no reason to believe that there was no negligence on the part of the driver because there is evidence of Shri Nilesh Shah, Ex. 82, that his car was overtaken by the fiat car wherein the deceased was travelling.

In his deposition he has submitted that his car had been overtaken by the car in which the deceased was travelling and only on account of rash and negligent driving of the driver of the said car, the said fiat car had dashed into a milestone and subsequently it not only turned turtle but it also rolled over 2-3 times. He had helped the passengers of the fiat car by taking them out from the car and an ambulance was summoned to rush the injured passengers to the hospital and the family members of the deceased were also informed of the accident. The evidence of Nilesh Shah has not been seriously challenged and looking to the record, we have no hesitation in coming to the conclusion that the accident had taken place only on account of the rash and negligent driving of driver Harshad Trivedi.

7. So far as the quantum of compensation is concerned, we have considered the evidence adduced before the Tribunal.

8. In our opinion, the Tribunal has awarded much more compensation than what ought to have been awarded to the claimants.

9. It is pertinent to note that the deceased was a lawyer by profession. It has been submitted on behalf of the claimants that the deceased had a very good practice and at the time when the accident had taken place, the deceased was earning Rs. 10,000-15,000/- p.m. and according to the evidence adduced by Dr. Jigar Bhattji, Ex. 38, the son of the deceased, the deceased could have earned Rs. 30,000-

40,000/- p.m. had he not suffered injuries in the accident.

10. So far as income of the deceased is concerned, evidence of Dr. Jigar Bhattji, Ex. 38, was considered by the Tribunal. We have gone through the evidence of Dr. Jigar Bhattji. Upon perusal of the said evidence, we do not find substance in the submission that the deceased was in fact earning Rs. 10,000-15,000/- p.m.. It has been stated by Dr. Jigar Bhattji, Ex. 38, the son of the deceased, that after the accident the deceased could not practice and he had no income from his professional work. He has further stated that had the deceased been alive and continued with his legal profession, his monthly income would have been Rs. 30,000-40,000/- p.m. At the time of the accident, age of the deceased was about 48 years. He has given details with regard to the injuries caused to the deceased.

11. It is pertinent to note that the Motor Accidents Claim Petition had been filed by the deceased on 18th October, 1989. In the said claim petition, he had prayed for compensation of Rs. 9,999/-.

12. According to Dr. Jigar Bhattji, Ex. 38, the deceased regained complete consciousness after about 6 months. He was in hospital as an indoor patient for more than a year. In spite of the said fact, in the Motor Accidents Claim Petition, which had been filed by the deceased on 19th October, 1989, the deceased had claimed only Rs.9,999/-. It is also pertinent to note that no income-tax return was being

filed by the deceased and, therefore, one can very well presume that the deceased was not having taxable income at that time. When a question was put to Dr. Jigar Bhattji, Ex. 38, whether the deceased was paying income-tax, his reply was that he did not know whether the deceased was paying income-tax. In our opinion, if the deceased was earning Rs. 10,000-15,000/- p.m. by way of professional income in 1989, he would have surely filed income-tax return because income of more than Rs. 1,20,000/- p.a. was taxable during the said period. In view of the fact that except evidence adduced by Dr. Jigar Bhattji, there is no evidence with regard to income of the deceased and since the deceased was not even filing income-tax return, we are constrained to presume that the deceased was not having taxable income and, thus, the statement made on oath by Dr Jigar Bhattji, Ex. 38, that the deceased was earning Rs. 10,000-15,000/- per month in 1989 cannot be accepted.

13. It is also pertinent to note that if the deceased had reasonably good practice in 1989, he would not have claimed compensation of only Rs. 9,999/- in the claim petition, which had been filed by him – which was signed by him on 18th October, 1989.

14. The claim petition had been amended by the present claimants by submitting an amendment application (Ex. 12) dated 22.7.1997 i.e. after the deceased expired on 10.12.1995. The said amendment application had been granted on 24th March, 1998. The aforesaid facts clearly denote that though the

deceased, a lawyer by profession, had expired on 10.12.1995, that is, 6 years after the accident, he did not submit any amendment application giving details with regard to the amount spent by him towards medical expenses incurred by him. The amendment application had been filed after his death, in 1997. If the deceased had reasonably good practice, as submitted by Dr. Jigar Bhattji, Ex. 38, son of the deceased, the deceased himself would have amended the claim petition during his life time. The fact that he did not amend the claim petition denotes that he never thought it proper or necessary to enhance the amount of claim.

15. It is doubtful whether the deceased expired because of the injuries which he had suffered on account of the accident which had taken place on 20.4.1989. More than 6 years after the date of the accident, the deceased expired and there does not appear to be any indication from the evidence adduced that the deceased died on account of the injuries suffered by him due to the accident.

16. Upon perusal of the record, we find that evidence of Dr. Jigar Bhattji, son of the deceased, is not supported by other doctors, who had been examined by the Tribunal.

17. Dr. Jigar Bhattji, Exh. 38, has stated that the deceased was in hospital for more than one year and he gained complete consciousness after about 6 months. Dr. M.G. Merchant, Exh. 60, an orthopedic surgeon, has stated in his deposition that the

deceased was in his hospital for about 3-4 months and the deceased was relieved after all his fractures had been completely healed. The said fact denotes that in fact the deceased was not in hospital for more than 1 year.

18. Dr. Jwalit Sheth, Exh. 65, a neurologist, under whose treatment the deceased was, has stated that the deceased was unconscious for about 15 days and he had treated the deceased for about 2 years and thereafter the deceased had never consulted him. The above fact denotes that no damage was done to the brain of the deceased or he was completely cured after 2 years as the deceased had never visited Dr. Jwalit Sheth.

19. As all fractures had healed and as the deceased was not required to be examined by a neuro physician Dr. Jwalit Sheth after 2 years of the accident, by no stretch of imagination one can say that the deceased expired after 6 years because of the injuries he had suffered on account of the accident.

20. Family physician of the deceased, Dr. Jayesh Tripathi, Exh. 49 has stated in his evidence that the deceased was not suffering from any disease in particular. He has stated that the deceased was having high blood pressure. At the same time, the said physician has stated that high blood pressure cannot be because of any special reason and, therefore, even high blood pressure cannot be attributed to the accident, which the deceased had suffered.

21. Thus, one can sum up that the deceased did not expire on 10.12.1995 because of the accident, which had taken place on 20.4.1989.

22, If the accident was not the causa causans for the death, in our opinion, no amount of compensation can be paid to the claimants - heirs of the deceased - under the head “future economic loss.” Even so far as the actual loss of income is concerned, there is no evidence to show that the deceased was having taxable income. The deceased being a lawyer by profession must have known that he had to pay income-tax if his income was taxable. In his life-time the deceased had not paid income-tax as he did not file even income-tax return. In the circumstances, one can safely presume that income of the deceased was less than taxable income. The Tribunal has awarded Rs. 2,16,000/- towards actual loss of income for 2 years on the basis that the deceased could not attend to his professional work for 2 years. Thus, the Tribunal presumed the income of the deceased to be Rs. 9,000/- p.m. and on that basis awarded Rs. 2,16,000/- being 2 years income as compensation as the deceased could not attend to his court work for 2 years.

23. So far as the income of the deceased is concerned, there is no evidence to the effect that the deceased was earning more than Rs. 10,000/- per month at the time when he met with the accident. The accident had taken place on 20.4.1989. According to the evidence adduced by Dr. Jigar Bhattji, Ex. 38, the deceased was earning Rs. 10,000/- p.m. from his

legal profession. If it is so, income-tax return would have been filed by the deceased as the said income was taxable at the relevant time. A pertinent query was put to Dr. Jigar Bhattji, Ex. 38, whether the deceased was filing income-tax return regularly and in reply to the said query Dr. Jigar Bhattji Ex. 38, had expressed his inability to answer the query positively.

24. At the relevant time, that is, for the accounting year 1989-1990, income of Rs. 18,000 p.a. was taxable. The deceased would have surely filed his return of income if in fact his income was more than Rs. 18,000 p.a., but the fact is that no income-tax return was ever filed by the deceased and, therefore, his income could not have been more than Rs. 18,000 p.a.. As the deceased was in hospital because of the accident for 1½ years, he can be compensated under the head 'actual loss of income" and if his income is taken as Rs. 18,000 p.a., at the most Rs. 27,000 could have been awarded to the deceased.

25. Towards 'future economic loss', the Tribunal has awarded Rs. 8,79,780/-. The said compensation has been awarded on the mere say of Dr. Jigar Bhattji, Ex. 38, one of the claimants, that income of the deceased would have been Rs. 30,000-40,000/- p.m. if he had not suffered injuries which resulted into death of the deceased. After considering the aforesaid evidence, the Tribunal presumed the future income of the deceased at Rs. 10,000/- p.m. After deducting 1/3rd of the said amount, the dependency has

been calculated at Rs. 6,600/- p.m. and as the deceased was 48 years old at the time of the accident, multiplier of 11 was applied by the Tribunal. Thus, the Tribunal has awarded Rs. 8,79,780/- [Rs. 6665 x 12 x 11] by way of future economic loss. In our opinion, the aforesaid amount could not have been awarded by the Tribunal, especially when there was no evidence to the effect that the applicant had died on account of the accident.

26. Rs. 6,00,000/- have been awarded under the head “pain, shock and suffering.”. In our opinion, the said amount is also on higher side. No justifiable reason has been assigned for awarding Rs. 6,00,000/- under the said head. Looking to the nature of injuries caused to the deceased, some amount ought to have been awarded to him because of the difficulties faced by him on account of the accident. The only relevant injury which would have caused difficulties to the deceased during rest of his life was with regard to shortening of his leg. Of course, the deceased was in hospital for substantially long period and, therefore, he should be compensated for the pain he must have suffered during the hospitalisation. Looking to the evidence, in our opinion, Rs. 6,00,000/- is on much higher side and in our opinion, not more than Rs. 1,00,000/- should have been awarded to the deceased even if a most lenient view is taken in the matter of awarding compensation. We, therefore, award Rs. 1,00,000/- by way of compensation under the head of “pain, shock and suffering.”

27. It is however true that one leg of the deceased had been shortened upon the operation, which had to be performed because of the accident. The deceased should be awarded some amount for the permanent injury caused to him. In our opinion, a sum of Rs. 1,00,000/- be awarded towards compensation on the count of permanent injury suffered by the deceased on account of shortening of one leg.

28. Looking to the aforesaid facts, the amount of Rs. 17,000/- awarded to towards consortium, funeral expenses, etc. is retained as it is.

29. Looking to the aforesaid position, in our opinion, the amount of compensation awarded by the Tribunal is on much higher side and, therefore, the appeal requires to be allowed and the amount of compensation, as stated hereinabove, would have to be worked out as under:

Towards pain, shock and suffering	1,00,000
Towards actual loss of income	27,000
Towards medicines, transportation, special diet, attendants, etc.	3,20,000
Towards permanent disfugurement on account of shortening of one leg	1,00,000
Towards consortium, funeral expenses, etc.	17,000
TOTAL	5,64,000

30. The following judgements have been referred to

by the learned advocates:

(A) The judgements cited by learned advocate Shri Rajni Mehta appearing for the appeallant are:

(1) R.D. HATTANGADI Vs PEST CONTROL (INDIA) PVT. LTD AND ORS, 1995 ACJ 366;
(2) BHAGWATI BAI AND ANR Vs BABLU AND ORS, 2007 ACJ 682;
(3) GUJARAT STATE ROAD TRANSPORT CORPORATION Vs AMISHKUMAR VINODBHAI AND ORS, 1996 (3) GLR 212;
(4) JENABHAI AND ORS Vs GUJARAT STATE ROAD TRANSPORT CORPORATION AND ORS, 1991 ACJ 585;
(5) G.M., MADHYA PRADESH STATE ROAD TRANSPORT CORPORATION AND ORS Vs PUSHPA DEVI AND ORS, 1995 ACJ 208;
(6) LEGAL REPRESENTATIVES OF OM PRAKASH MAYA AND ORS Vs MAHENDRA PAL AND ORS, 1989 ACJ 1114;
(7) SAMPATI LAL Vs HARI SINGH AND ORS, 1985 ACJ 539;

(B) The judgement cited by learned advocate Shri A.H. Mehta appearing for the claimants is:

(1) VIDHYAWATI AND ANR Vs GURUSWAMY AND ANR, 2005 ACJ 433;
(2) LEGAL REPRESENTATIVES OF OM PRAKASH MAYA AND ORS Vs MAHENDRA PAL AND ORS, 1989 ACJ 1114;
(3) JENABHAI AND ORS Vs GUJARAT STATE ROAD TRANSPORT CORPORATION AND ORS, 1991 ACJ 585

31. We are in agreement with the principles laid down in the aforestated judgements, but as facts of the instant case are absolutely different from the

facts of the cases referred to in the aforestated judgements, we do not think it necessary to deal with the same.

32. Thus, the appeal is allowed to the above extent with no order as to costs. The total amount of compensation payable would be Rs. 5,64,000 with 9% interest from the date of filing of the amendment application till the date of realisation.

33. The learned advocates have submitted that up to now Rs. 13 lakhs have been paid to the claimants and Rs. 43,21,800/- have been deposited by the appellant – Insurance Company with a nationalised bank in pursuance of direction given by this Court.

34. The learned advocates have further submitted that on the basis of the decretal amount, the claimants will have to return some amount to the appellant – Insurance Company and, therefore, whatever amount has been deposited with a nationalised bank by the appellant – Insurance Company shall have to be returned to the appellant - Insurance Company with interest thereon and the excess amount paid to the claimants shall be recovered from the claimants by the appellant insurance company. Decree shall be drawn accordingly.

(Anil R. Dave, J.)

(H.B. Antani, J.)

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